

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

WOLSEY A. SEMPLE, ET AL.
Respondent

Case No: I-00-70294

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Code §§ 6-2701 *et seq.*) and Title 21, Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (00-70294) served July 13, 2001, the Government charged Respondent Wolsey A. Semple with a violation of 21 DCMR 700.3 for allegedly failing to properly containerize solid waste.¹ The Notice of Infraction charged that the alleged violation occurred on July 12, 2001 at 3433 14th Street, N.W., and seeks a \$1,000.00 fine.

On July 30, 2001, Respondent answered the Notice of Infraction with a timely plea of Deny and requested a hearing before the administrative court pursuant to D.C. Code § 6-

¹ 21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

2712(a)(3). *See also* D.C. Code §§ 6-2712(e) and 6-2715. On August 7, 2001, this administrative court issued a Case Management Order setting a hearing date of September 12, 2001 at 1:00PM.

The hearing took place as scheduled. Gerard Brown, the charging inspector in the case, appeared on behalf of the Government. Respondent Wolsey Semple sought leave to appear by telephone which, in light of the Government's consent and for the sake of judicial economy, I granted.² Pursuant to the provisions of the August 7, 2001 Case Management Order, the Government previously submitted two exhibits, Petitioner's Exhibits 101, 102 ("PX-101, PX-102") which were admitted without objection.

II. Findings of Fact

Based upon the testimony of the inspector and the Respondent, and upon the entire record in this matter, I now make the following findings of fact:

1. Respondent Wolsey Semple is the owner of an apartment building located at 3433 14th Street, N.W.

² Respondent represented that he did not appear in person because he thought that, in light of the tragic events of September 11, 2001, this administrative court would be closed. Although a state of emergency was declared by the Mayor of the District of Columbia on September 11, 2001, all District of Columbia government offices, with certain limited exceptions, were declared open for business on September 12, 2001.

2. Based on an anonymous complaint about rats observed in the alley behind 3433 14th Street, N.W., on July 12, 2001, the inspector visited Respondent's apartment building.
3. Upon inspection of the trash collection area behind Respondent's building at 3433 14th Street, N.W. on July 12, 2001, the inspector noted an over-filled trash receptacle as well as various bags of waste surrounding the receptacle. PX-101; PX-102.
4. The inspector did not issue an abatement notice to Respondent prior to the July 12, 2001 issuance of the Notice of Infraction (00-70294).
5. While not disputing the condition of the trash collection area behind his building on July 12, 2001, Respondent contends that, by failing to issue an abatement notice prior to issuing the Notice of Infraction, the Government failed to provide him with adequate notice of the violation and opportunity to cure.
6. Respondent promptly corrected the alleged violation at 3433 14th Street, N.W.

III. Conclusions of Law

1. By allowing substantial amounts of trash to accumulate outside of the designated trash receptacle on July 12, 2001, Respondent failed to store and containerize for collection all solid waste "in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard." 21 DCMR 700.3; *see also* PX-101; PX-102. Accordingly, Respondent violated 21

DCMR 700.3 on July 12, 2001. A fine of \$1,000.00 is authorized for that violation. 16 DCMR 3216.1(b).

2. Respondent does not dispute the condition of his trash collection area on July 12, 2001 as testified to by the inspector and as reflected in PX-101 and PX-102. Respondent asserts in his defense, however, that it is the usual practice of the Government inspectors he has dealt with to issue an abatement notice prior to the issuance of any fines or other escalation in enforcement. Because no abatement notice was issued in this case, Respondent contends that he did not have sufficient notice of the infraction. In turn, Respondent requests a suspension or reduction of the fine.
3. Respondent's theory of defense is unpersuasive. For cases such as this arising under the Civil Infractions Act of 1985, the applicable notice requirements are set forth in D.C. Code § 6-2711. In part, these requirements call for a respondent to have adequate notice of the law he or she is alleged to have violated, as well as the authorized sanction for the alleged violation; the time and place of the alleged violation; and instructions relating to entering a plea, the right to a hearing, and sanctions regarding a failure to promptly respond to the notice of violation. *See* D.C. Code § 6-2711. There is nothing in the record to suggest that Respondent did not obtain all the notice of his alleged violation of 21 DCMR 700.3 required under the Civil Infractions Act of 1985. In addition, Respondent's timely plea indicates that there were no apparent service problems regarding the Notice of Infraction (00-70294).

4. Moreover, Section 700.3 does not contain any notice requirements beyond those set forth in the Civil Infractions Act of 1985. 21 DCMR 700.3. Despite whatever “practice” the Government may have had in issuing abatement notices for a violation of 21 DCMR 700.3, therefore, such a practice is not required by the regulation. *See DOH v. Kennedy Center*, OAH No. I-00-11212 at 3 (Final Order, July 18, 2001) (noting regulation itself provides all the notice that is legally required); *see also Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 204 (D.C. 1995) (rejecting theory that issuance of notice of infraction for violation of 21 DCMR 700.3 without prior abatement notice violated constitutional due process). As a result, the issuance of an abatement notice for an alleged violation of 21 DCMR 700.3 is left to the Government’s broad enforcement discretion which, absent a substantial showing on the part of a respondent that this discretion has been unlawfully exercised, is inappropriate for this administrative court to review. *See DOH v. Popeye’s/Faris Enterprises*, OAH No. I-00-70252 at 3-5 (Final Order, August 8, 2001). Respondent has made no such showing in this case.
5. Respondent has offered undisputed testimony that the violation was promptly corrected. In light of that testimony, I conclude that a modest reduction, although not a suspension, of the fine is appropriate. Accordingly, the \$1,000.00 fine will be reduced to \$825.00. *See D.C. Code 6-2703(b)(6); 18 U.S.C. § 3553.*

IV. Order

Based upon the findings of fact, the conclusions of law and the entire record in this case, it is hereby, this _____ day of _____, 2001:

ORDERED, that Respondent shall pay a total of **EIGHT HUNDRED TWENTY-FIVE DOLLARS (\$825.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Code § 6-2713(i), and the sealing of Respondent's business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ **9/18/01**

Mark D. Poindexter
Administrative Judge